

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariana Thomas	Team: Squad #13	CCRB Case #: 202004652	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/11/2020 11:00 PM, Thursday, 06/25/2020 1:00 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 71	18 Mo. SOL 12/25/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/26/2020 2:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/26/2020 2:01 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. LT Daniel Guida	00000	941862	071 PCT
4. PO Joseph Nicoletti	10711	961004	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Francisco Diaz	27416	952677	071 PCT
2. DTS Michael Gonzalez	05947	943313	071 PCT
3. PO Jason Schreckenstein	01340	956247	071 PCT
4. SGT John Kenny	05559	950674	071 PCT
5. PO Morgan Taylor	09070	966882	071 PCT
6. PO Reginald Smith	17215	951279	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Guida	Force: On March 11, 2020, Lieutenant Daniel Guida used physical force against § 87(2)(b)	§ 87(2)(b)
B.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida threatened to notify Administration for Children's Services.	§ 87(2)(b)
E.LT Daniel Guida	Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to Individuals.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.LT Daniel Guida	Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to Individuals.	
G.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida stopped Individuals.	
H.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida frisked Individuals.	
I.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida frisked § 87(2)(b)	
J.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida searched Individuals.	
K.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida searched § 87(2)(b)	
L.PO Joseph Nicoletti	Abuse: On March 11, 2020, Police Officer Joseph Nicoletti threatened to arrest Individuals.	
M.PO Joseph Nicoletti	Abuse: On March 11, 2020, Police Officer Joseph Nicoletti entered § 87(2)(b) in Brooklyn.	
N.PO Joseph Nicoletti	Abuse: On March 11, 2020, Police Officer Joseph Nicoletti searched § 87(2)(b) in Brooklyn.	
O.LT Daniel Guida	Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)	
P.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida questioned § 87(2)(b)	
Q.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida threatened to notify Administration for Children's Services.	
R.LT Daniel Guida	Off. Language: On March 11, 2020, Lieutenant Daniel Guida made remarks to § 87(2)(b) based upon race.	
S.LT Daniel Guida	Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)	
T.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida failed to provide Individuals with a business card.	
U.LT Daniel Guida	Abuse: On March 11, 2020, Lieutenant Daniel Guida failed to provide § 87(2)(b) with a business card.	
V. Officers	Abuse: On June 25, 2020, officers entered § 87(2)(b) in Brooklyn.	
W. Officers	Abuse: On June 25, 2020, officers searched § 87(2)(b) in Brooklyn.	
X. An officer	Abuse: On June 25, 2020, an officer questioned § 87(2)(b)	
Y. Officers	Abuse: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.	
Z. Officers	Abuse: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.	
2A. Officers	Abuse: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.	

Case Summary

On June 26, 2020, § 87(2)(b) filed this complaint via the CCRB's call processing system on behalf of himself, his wife, § 87(2)(b) his father, § 87(2)(b) and unidentified individuals.

On March 11, 2020, at approximately 11:00 p.m., Lieutenant Daniel Guida, Sergeant John Kenny, Police Officer Francisco Diaz, Detective Michael Gonzalez, Police Officer Jason Schreckenstein, and Police Officer Joseph Nicoletti, all of the 71st Precinct, entered the § 87(2)(b) of § 87(2)(b) where § 87(2)(b) was hosting his birthday party, which his wife, § 87(2)(b) his father, § 87(2)(b) his 17-year-old daughter, § 87(2)(b) and 10 to 15 unidentified guests were attending. Lieutenant Guida allegedly pushed § 87(2)(b) as he walked inside the § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**). Lieutenant Guida entered § 87(2)(b) § 87(2)(b) apartment and threatened to arrest § 87(2)(b) and notify Administration of Child Services ("ACS") (**Allegations B to D: Abuse of Authority, § 87(2)(g)**). Lieutenant Guida allegedly told individuals to "shut the fuck up" (**Allegation E: Discourtesy, § 87(2)(g)**) and said he did not "give a fuck" about marijuana (**Allegation F: Discourtesy, § 87(2)(g)**). Lieutenant Guida stopped individuals at the party (**Allegation G: Abuse of Authority, § 87(2)(g)**). Per Lieutenant Guida's instruction, officers frisked unidentified individuals and § 87(2)(b) and allegedly searched their pockets (**Allegations H to I: Abuse of Authority, § 87(2)(g)**). **Allegations J to K: Abuse of Authority, § 87(2)(g)** PO Nicoletti threatened to arrest individuals if they did not leave the premises (**Allegation L: Abuse of Authority, § 87(2)(g)**). PO Nicoletti entered the § 87(2)(b) apartment and allegedly searched it (**Allegation M: Abuse of Authority, § 87(2)(g)**). **Allegation N: Abuse of Authority, § 87(2)(g)** Lieutenant Guida allegedly told § 87(2)(b) he did not "give a fuck" (**Allegation O: Discourtesy, § 87(2)(g)**). Lieutenant Guida allegedly questioned § 87(2)(b) about guns, and threatened to notify ACS (**Allegation P: Abuse of Authority, § 87(2)(g)**). **Allegation Q: Abuse of Authority, § 87(2)(g)** Lieutenant Guida spoke offensively and discourteously toward § 87(2)(b) (**Allegation R: Offensive Language, § 87(2)(g)**). **Allegation S: Discourtesy, § 87(2)(g)** The officers left without providing RTKA business cards (**Allegations T to U: Abuse of Authority, § 87(2)(g)**). No arrest or summons resulted from this portion of the incident.

On June 25, 2020, at approximately 1:00 p.m., § 87(2)(b) § 87(2)(b) and three other males were standing outside of § 87(2)(b) when four unidentified officers arrived. Three of the officers walked past the civilians, and entered § 87(2)(b) where § 87(2)(b) and § 87(2)(b) s two young children were, while one officer remained outside with the civilians (**Allegation V: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) later told § 87(2)(b) officers had searched their apartment (**Allegation W: Abuse of Authority, § 87(2)(g)**). The officer who remained outside questioned § 87(2)(b) (**Allegation X: Abuse of Authority, § 87(2)(g)**). The officers left without providing their business cards (**Allegations Y to AA: Abuse of Authority, § 87(2)(g)**). No arrest or summons resulted from this portion of the incident.

BWC footage of the March 11, 2020 incident date was obtained from the NYPD Legal Bureau. The footage is in IAs #89 to 94 (**Board Review 01-06**) and summarized in IA #138 (**Board Review 07**). Cell phone video of the March 11, 2020 incident date was obtained from § 87(2)(b). It is located in IA #65 (**Board Review 08**) and is summarized in IA #138 (**Board Review 09**). There is no video evidence of the June 25, 2020 incident date (**Board Review 10-13**).

Findings and Recommendations

Allegation (A) Force: On March 11, 2020, Lieutenant Daniel Guida used physical force against § 87(2)(b)

In Lieutenant Guida's BWC footage (**Board Review 01**) beginning at the 00:35 minute mark of the media player timestamp (visible at the bottom of the screen), Lieutenant Guida stands outside the door to the § 87(2)(b) of the building. At 00:38, the door opens, though it is unclear who opens it, and § 87(2)(b) identified via investigation, steps forward. There is no audio. At 00:42, § 87(2)(b) moves back, though it is unclear what causes this. At 00:48, § 87(2)(b) raises both hands at her sides, palms forward, and § 87(2)(b) pulls her back towards him. Lieutenant Guida enters the § 87(2)(b) where approximately 15 civilians are visible. The BWC footage from PO Diaz and Det. Gonzalez does not capture them or PO Nicoletti pushing § 87(2)(b).

§ 87(2)(b) testified that the door to the § 87(2)(b) opens into a room which has some seating and storage space. There is another door past that room which leads to his apartment (**Board Review 14**). Approximately 10 to 15 of § 87(2)(b)'s guests, whose information he agreed to send to the CCRB but never did (see IAs for contact attempts), were socializing in the room outside of his apartment. The party was confined to this room and some people were smoking marijuana. There was music playing on a small boombox, but it was not loud. § 87(2)(b)'s children, § 87(2)(b) his two-year-old daughter, and his eight-year-old son, were inside his apartment; they did not exit the apartment for the duration of the party. § 87(2)(b) opened the door that leads from the room in the § 87(2)(b) to outside to take the trash out, and four officers pushed the door open and entered the room in the § 87(2)(b).

§ 87(2)(b)'s statement was somewhat consistent with § 87(2)(b)'s statement. He testified that the music at the party was not loud, and that no one was smoking marijuana or consuming drugs (**Board Review 15**). Not long after the party began, five officers pushed passed § 87(2)(b). He was unable to describe how § 87(2)(b) was pushed, nor did he know any of the party guest's information.

§ 87(2)(b) testified that she and her younger siblings remained inside the family's apartment during the party; they were not in the other room of the § 87(2)(b) which the party was confined to. No one at the party had been smoking marijuana or consuming drugs (**Board Review 16**). She did not know any of the guests' names or contact information.

§ 87(2)(b) was unavailable to the investigation (See IAs for contact attempts).

§ 87(2)(b) the building manager of § 87(2)(b) provided a brief phone statement to the CCRB. He said the room when one first enters the § 87(2)(b) is not a common area for residents, nor is it considered a part of the § 87(2)(b) apartment. It is the building's private space and is not for people from the public to enter (**Board Review 17, 18**).

Lieutenant Guida testified that he and his officers responded to a disorderly house party, though he could not recall what made it disorderly nor what brought the officers there, despite reviewing his BWC footage in its entirety (**Board Review 19**). He did not think he made any physical contact with or pushed § 87(2)(b) as he entered into the § 87(2)(b).

PO Diaz testified that the officers responded to investigate a noise complaint, which he believed was received from 311 (**Board Review 20**). There was a strong odor of marijuana emanating from the § 87(2)(b) prior to the officers entering.

PO Nicoletti testified that the officers responded to either a 911 or a 311 call (**Board Review 21**).

When they arrived, from the police car, he observed a group of approximately 20 to 30 people standing in front of the § 87(2)(b) door, some of whom were smoking marijuana cigarettes and drinking out of open containers of alcohol. When the individuals saw police approaching, three to five of them ran inside. The officers then entered the § 87(2)(b) through the open door, where PO Nicoletti observed marijuana and open containers of alcohol in plain view.

Det. Gonzalez testified that the officers responded to the location regarding “quality of life” issues of people constantly smoking marijuana, drinking alcohol, and gambling inside the § 87(2)(b) the building, and outside, complaints which had been made by other civilians at the stationhouse, via 311 and at monthly community meetings (**Board Review 22**). Lieutenant Guida decided to go to the location, though Det. Gonzalez did not know why.

PO Schreckenstein testified that he received a phone call from Lieutenant Guida, who instructed him and his partner, Sgt. Kenny, to go to location, where there was a large disorderly group (**Board Review 23**). By the time they arrived, the other officers were already inside the room in the § 87(2)(b)

None of the officers saw any officer push any civilian when entering the § 87(2)(b) and they each denied doing so themselves.

§ 87(2)(g)

Allegation (B) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida entered § 87(2)(b) in Brooklyn.

In Lieutenant Guida’s BWC footage (**Board Review 01**), beginning at the 00:50 minute mark of the media player timestamp (visible at the bottom of the screen), Lieutenant Guida walks into the § 87(2)(b) past civilians and towards the door to the § 87(2)(b) apartment. At 01:00, when audio initiates in the footage, Lieutenant Guida orders civilians to put everything down. At 01:07, he walks into the § 87(2)(b) apartment through the open door and orders the civilians inside to get out because they are being given an order by police to do so. Various civilians exit the apartment. At 01:45, Lieutenant Guida tells § 87(2)(b) who walks towards him from the back of the apartment, that she can stay there with her young children. As mentioned above, § 87(2)(b) was unavailable to the investigation. Neither § 87(2)(b) § 87(2)(b) nor § 87(2)(b) mentioned this aspect of the incident in their CCRB interviews.

Lieutenant Guida testified that he did not remember the circumstances of the condition at the location or his entry into the premises, including his entry into the apartment. He did not recall if he had any reason to believe any civilians were armed.

Det. Gonzalez, PO Schreckenstein, and PO Diaz testified that they smelled marijuana emanating from the § 87(2)(b) though Det. Gonzalez did not recall if he observed any in plain view, while PO Schreckenstein said he did not, and PO Diaz said he did. Additionally, PO Nicoletti said he observed various civilians smoking marijuana and drinking alcohol from open containers before they ran inside the § 87(2)(b) where he observed marijuana and open containers of alcohol. PO Nicoletti and PO Schreckenstein further said they did not have any reason to believe any civilians were armed, while PO Diaz did not recall, and Det. Gonzalez said he did due to their presence in a

high crime area.

Under the Fourth Amendment of the U.S. Constitution and Article I, Section 12, of the New York Constitution, warrantless entries into private dwellings are presumptively unreasonable unless the occupants of the dwelling provide consent, or the officers prove exigent, or emergency circumstances necessitated their entry. People v. Scott, 133 A.D.3d 794 (2015) (**Board Review 28**); Payton v. New York, 445 U.S. 573 (1979) (**Board Review 29**). People v. McBride, 14 N.Y. 3d 440 (2010), requires that an urgent need be present to justify a warrantless entry. The factors used to be considered include: 1) the gravity or violent nature of the offense with which the suspect is to be charged, 2) whether the suspect is reasonably believed to be armed, 3) a clear showing of probable cause . . . to believe that the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) the peaceful circumstances of the entry (**Board Review 68**). The emergency exception to the warrant requirement permits officers to enter a protected space when they have reasonable grounds to believe an emergency is at hand and there is an immediate need for their assistance to protect life or property. The entry must not be primarily motivated by the intent to arrest and seize evidence, and there must be a reasonable basis to associate the emergency with the area or place to be searched. People v. Ormanian, 55 Misc. 3d 566 (2016) (**Board Review 69**). In People v. Arviello, 133 A.D.2d 589 (1987) (**Board Review 40**), the Court determined that an individual's presence in a high crime area alone does not provide officers with justification to believe the individual is armed.

The BWC footage confirms that Lieutenant Guida did not request consent from the occupants of the § 87(2)(b) apartment prior to his entry into their dwelling. Though he could not recall the conditions of the party, the only other offense some of the officers mentioned observing was civilians smoking marijuana, which is not violent. Furthermore, though Lieutenant Guida and PO Diaz did not recall if he had any reason to believe any civilians were armed, PO Nicoletti and PO Schreckenstein said they did not, and Det. Gonzalez said his only reason to believe they were, was their presence in a high crime area. Additionally, the BWC footage confirms that there was no life-threatening emergency requiring Lieutenant Guida's immediate assistance inside the apartment. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida threatened to arrest § 87(2)(b)

Allegation (D) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida threatened to notify Administration for Children's Services.

In Lieutenant Guida's BWC footage (**Board Review 01**), beginning at the 01:43 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) walks from the back of the apartment towards Lieutenant Guida, while carrying a female child in her arms and walking next to a male child. At 01:46, § 87(2)(b) says something unintelligible and Lieutenant Guida replies, "Then don't have parties where people are smoking weed and drinking in the § 87(2)(b)." § 87(2)(b) denies that they are having a party. At 02:02, Lieutenant Guida says, "How many people should I take to jail tonight? So, if there's no guns in here, you're good." § 87(2)(b) says, "There's not." Lieutenant Guida says, "But if I get any noise, I promise you people are going to jail and ACS is getting notified, and these two [points at children] are going to be going to Manhattan with me, and you're going to be going to jail for child endangerment. I'm just letting you know."

As noted above, § 87(2)(b) was unavailable to the investigation. As described earlier, § 87(2)(b) and § 87(2)(b) said § 87(2)(b) and her younger siblings remained inside the apartment as the party took place in the § 87(2)(b) room outside of the apartment. § 87(2)(b) denied that anyone was smoking marijuana inside the apartment. Neither § 87(2)(b) nor § 87(2)(b) mentioned this aspect of the incident during their respective CCRB interviews.

Lieutenant Guida testified that he could not tell at the time of the incident if the party was exclusively taking place in the storage room or also inside the apartment. Upon reviewing his BWC footage, Lieutenant Guida said he made this statements to § 87(2)(b) because he was trying to keep everyone calm and wanted to explain that the situation was dangerous for the children due to the multiple adults consuming alcohol and marijuana late at night. He did not recall if he ultimately notified ACS.

PO Schreckenstein, PO Diaz, and Det. Gonzalez did not recall any children being present, nor Lieutenant Guida threatening to notify ACS. Det. Gonzalez said if adults had been smoking marijuana and drinking alcohol at the location, it would have created a hazardous environment for children, in which case, the officers would have been required to notify ACS. PO Nicoletti testified that though he noted, “Children in § 87(2)(b) in his memo book, he could not say what the children were doing or if they seemed to be in danger. Upon reviewing Lieutenant Guida’s BWC footage, he recalled that he entered the apartment through the opened door to check if there were any more children present for their safety. He observed marijuana and open containers of alcohol in plain view inside the apartment, but he did not recall if he observed any children there.

New York Penal Law, Section 260.20, states that a person is guilty of endangering the welfare of a child (a class A misdemeanor) when he or she knowingly acts in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than 17 years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health (**Board Review 30**). NYPD Patrol Guide Procedure 215-03 states that the purpose of emergency removals or investigation and reporting of abused, neglected, or maltreated children is to protect children from abuse, neglect, or maltreatment by instituting emergency removal proceedings if a child is in immediate danger, or conduct an investigation of a potential abuse situation where a child is in no imminent danger, and report the findings to the appropriate authorities.” (**Board Review 31**).

Though Lieutenant Guida said he threatened to notify ACS and arrest § 87(2)(b) because he wanted to explain that the situation was dangerous for children due to adults consuming alcohol and smoking marijuana, his BWC footage reveals that he qualified these threats by saying he would only do so if he, “Got any noise.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to Individuals.

Allegation (F) Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to Individuals.

Allegation (G) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida stopped Individuals.

Allegation (H) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida frisked Individuals.

Allegation (I) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida frisked
§ 87(2)(b)

Allegation (J) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida searched Individuals.

Allegation (K) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida searched

§ 87(2)(b)

In Lieutenant Guida's BWC footage (**Board Review 01**), beginning at the 02:45 minute mark of the media player timestamp (visible at the bottom of the screen), Lieutenant Guida, who stands in the room outside of the § 87(2)(b) apartment, addresses the crowd, and says, "Here's what's gonna happen. Every single person is gonna get searched on the way out of here," and that no one can stay unless they live there. At 03:28, he says, "Anyone that has anything on them other than weed, you're gonna have a problem. If you have weed, I don't give a fuck," as he faces a group of male civilians who do not respond. He turns to PO Nicoletti and says, "Go stand over there, start tossing people on their way out."

What follows is more clearly captured in Det. Gonzalez's BWC footage (**Board Review 04**), where at the 01:54 minute mark of the media player timestamp (visible at the bottom of the screen), PO Nicoletti says, "Alright, let's go. One by one," which Det. Gonzalez repeats before they both pat various unknown individuals down on their way out of the § 87(2)(b) until 04:30. It is unclear if either officer enters any civilians' pockets due to Det. Gonzalez's close proximity to the civilians' bodies and the movement of the camera. At 07:59, as Det. Gonzalez walks around the § 87(2)(b) he says, "There's literally blunts everywhere." Though PO Nicoletti's BWC's light is blinking red in the footage, indicating that he was recording, multiple BWC requests for him were returned negative (**Board Review 67**).

Additional frisks are captured in PO Diaz's BWC footage (**Board Review 03**). At the 03:07 minute mark of the media player timestamp (visible at the bottom of the screen), PO Diaz frisks § 87(2)(b). At 03:38, he frisks an unidentified man, who stands with his hands raised. It is unclear if PO Diaz enters either civilian's pockets due to his BWC's close proximity to their bodies. PO Schreckenstein's (**Board Review 05**) and Sgt Kenny's BWC footage (**Board Review 06**) does not capture them frisking any individuals.

§ 87(2)(b) said an officer whom he could only describe as a male wearing a bulletproof vest, frisked each guest one-by-one from head to toe, though he did not know if the officer placed his hands inside people's pockets. § 87(2)(b) said Lieutenant Guida "checked" each adult guest by patting them down over their clothes and that he might have reached inside their pants pockets. § 87(2)(b) said Lieutenant Guida said, "Shut the fuck up," as he addressed all of the civilians. Subsequently, all the officers patted down his clothes, as well as all his guests' clothes, and placed their hands inside everyone's pants pockets.

Lieutenant Guida testified that he did not recall if he frisked or searched anyone, if he instructed any officers to do so, or if he had any indication that any of the civilians were armed. Upon reviewing his BWC footage, Lieutenant Guida did not have an independent recollection of saying, "Every single person is gonna get searched," but said anyone who the officers had probable cause to search would have been. When he said, "Start tossing people," he meant that everyone with contraband in plain sight, who had been smoking marijuana, was to be searched. Lieutenant Guida did not know if only those who had been smoking marijuana were searched, but said his officers knew they needed probable cause to search someone. He said, "If you have weed, I don't give a fuck" to keep the people who were smoking weed calm and to let them know they would not be arrested or summonsed, though he did not recall why he used profanity.

PO Nicoletti testified that he frisked individuals to make sure no one had any dangerous instruments or weapons, for the officers' safety, though he did not observe anything which made

him believe they were armed. He did not remember if he placed his hands inside anyone's pockets, or if Lieutenant Guida instructed him to frisk or search anyone. He was unable to review his BWC footage (he was interviewed more than a year after this incident), and noted that the NYPD does not retain BWC footage indefinitely.

Det. Gonzalez testified that the location was a high crime area where civilians routinely smoke marijuana, drink alcohol, and gamble, which led him to believe the civilians involved in this incident were armed, though there was no firearm condition there. Besides that, he did not have any other reason to believe the civilians were armed. Upon reviewing his BWC footage, he remembered that he frisked individuals because Lieutenant Guida instructed the officers to "toss" the civilians, as well as for his safety.

PO Diaz testified that he did not recall if he had any reason to believe any civilians were armed. Upon reviewing his BWC footage, he remembered that he took Lieutenant Guida's statement to start "tossing people" as an instruction to frisk civilians, which is why he frisked the civilians captured in his BWC footage.

PO Schreckenstein testified that he had no reason to believe any civilians were armed, except for the fact that that building is "not that great," because there have been numerous arrests for firearms there. He denied frisking or searching any civilians, and he denied seeing any officer do so.

All the officers testified that none of the civilians were considered under arrest during this incident.

As noted above, § 87(2)(b) and § 87(2)(b) did not know or did not provide the other party goes names or contact information. Additionally, no arrest or summonses resulted from this incident and none of the officers included any of the civilians' names in their memo books (**Board Review 32-36**). Furthermore, the available BWC footage shows officers never ordered any of the unidentified civilians to produce their ID or provide their identifying information. Additionally, no Stop Reports were prepared for this incident (**Board Review 70**).

NYPD Patrol Guide, Procedure 200-02, states that officers must "render [their] services with courtesy and civility," and that they must, "maintain a higher standard of integrity than is generally expected of others" (**Board Review 37**). Disciplinary Court No. 2018-18951 states that officers have a responsibility to act with decorum in their interactions with civilians, though there are certain situations where profane remarks made during a stressful or chaotic situation do not constitute misconduct (**Board Review 38**).

People v. DeBour, 40 N.Y. 2d 210 (1976) (**Board Review 39**), states that, "an officer may frisk an individual when they reasonably suspect that the individual may be armed and present a risk of harm to the officer. If an apparent weapon is revealed during a frisk, a limited search may be conducted only of the area where the apparent weapon was discovered." In People v. Arviello, 133 A.D.2d 589 (1987) (**Board Review 40**), the Court determined officers were not justified in frisking an individual solely based on their presence in a high crime area.

The BWC footage confirms that Lieutenant Guida did not tell the civilians to "shut the fuck up" before he said they were all going to be searched, as § 87(2)(b) alleged he did. § 87(2)(b). However, the BWC footage does capture Lieutenant Guida telling the civilians he did not "give a fuck" if they had marijuana on them. Though several civilians were present and Lieutenant Guida said he said this to calm them down, the BWC footage confirms that the civilians had been quietly listening to him and that the situation was neither stressful nor chaotic. § 87(2)(g)

§ 87(2)(g)

As stated above, the officers provided inconsistent testimony regarding whether they observed the partygoers smoking marijuana. Though § 87(2)(b) and § 87(2)(b) denied that anyone was smoking marijuana at the party, § 87(2)(b) acknowledged that some civilians were, which the BWC footage supports given that Det. Gonzalez is captured saying there were “blunts everywhere.”

§ 87(2)(g)

Both PO Diaz and Det. Gonzalez said they conducted their respective frisks per Lieutenant Guida’s instruction, and though PO Nicoletti did not recall such instruction, the BWC footage corroborates Det. Gonzalez’s and PO Diaz’s testimony. Lieutenant Guida said he could not recall if he had any reason to believe any civilians were armed, and the only reason provided by the other officers as to why they believed the civilians were armed was their presence in a high crime area. § 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: On March 11, 2020, Police Officer Joseph Nicoletti threatened to arrest individuals.

In Det. Gonzalez’s BWC footage (Board Review 04), beginning at the 02:50 minute mark of the media player timestamp (visible at the bottom of the screen), after PO Nicoletti frisks a few individuals, he turns to the § 87(2)(b) door, and says to civilians who are not visible, “Go outside, otherwise you’re getting a summons or you’re getting arrested.”

Neither § 87(2)(b) nor § 87(2)(b) mentioned this aspect of the incident during their respective CCRB interviews. As mentioned above, § 87(2)(b) acknowledged that some individuals were smoking marijuana, though none inside his apartment, while § 87(2)(b) and § 87(2)(b) said no one at the party had been smoking marijuana or consuming any drugs.

PO Nicoletti testified the officers used their discretion and ultimately did not make any arrests or issue any summonses during this incident. At the time of the incident, the Mayor’s Executive Order regarding the Covid-19 pandemic, which banned large gatherings and imposed a curfew, was in effect, which all the civilians had been in violation of. PO Nicoletti had been instructed, though he did not remember by whom, to use his discretion when summoning for this violation. Upon reviewing Det. Gonzalez’s BWC footage, PO Nicoletti said he was solely referring to the Mayor’s

Executive Order when he said the civilians would be summonsed or arrested.

As discussed earlier, PO Diaz testified that some individuals were smoking marijuana and drinking alcohol, while Det. Gonzalez and PO Schreckenstein said they smelled marijuana inside the § 87(2)(b) though Det. Gonzalez could not recall if he observed any, and PO Schreckenstein said he did not observe any marijuana at all. None of the officers witnessed civilians committing any other offenses for which they could have been arrested or summonsed.

The Mayor's Executive Order was not in effect until March 16, 2020, five days after this incident (**Board Review 43**).

Though PO Nicoletti only cited the Mayor's Executive Order, which was not in effect at the time of the incident, PO Diaz said he observed civilians smoking marijuana in the room outside of the § 87(2)(b) apartment, which they could have been summonsed or arrested for at the time of this incident (because possession of marijuana was still an arrestable offense). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (M) Abuse of Authority: On March 11, 2020, Police Officer Joseph Nicoletti entered § 87(2)(b) § 87(2)(b) § 87(2)(b) t in Brooklyn.

Allegation (N) Abuse of Authority: On March 11, 2020, Police Officer Joseph Nicoletti searched § 87(2)(b) § 87(2)(b) § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified that an officer, identified via investigation as PO Nicoletti, entered his bedroom. He believed PO Nicoletti searched his bedroom because he later saw that boxes and barrels in his room were opened, and items which had been inside were removed and thrown on the ground. Neither § 87(2)(b) nor § 87(2)(b) mentioned this part of the incident during their CCRB interviews.

In Lieutenant Guida's BWC footage (**Board Review 01**), beginning at the 06:22 minute mark, as Lieutenant Guida speaks to § 87(2)(b) PO Nicoletti is visible standing inside the apartment, in front of the doorway, as he frisks an unidentified man and then gestures for him to exit the apartment. At 06:30, PO Diaz turns to PO Nicoletti, and says, "Joe, talk to them before you go in." At 06:46, PO Nicoletti directs § 87(2)(b) out of the apartment and walks further inside the apartment, such that he is no longer visible. Though he is not captured, PO Nicoletti is heard saying, "Hello, how are you doing?" to the civilians inside. At 07:04, he reappears in the doorway and remains standing in the apartment speaking to the civilians inside. At 08:22, he exits the apartment. As discussed previously, BWC footage for PO Nicoletti returned with negative results.

PO Nicoletti testified that upon reviewing Lieutenant Guida's BWC footage, he recalled that he entered the apartment through the opened door to check if there were any more children present for the children's safety, and to make sure there was no one inside who was not supposed to be there for the residents' safety. PO Nicoletti did not enter any bedrooms; he only remained right inside the doorway where the kitchen was. He denied opening any boxes or barrels and removing items.

Under the Fourth Amendment of the U.S. Constitution and Article I, Section 12, of the New York Constitution, warrantless entries into private dwellings are presumptively unreasonable unless the occupants of the dwelling provide consent, or the officers prove exigent, or emergency circumstances necessitated their entry. People v. Scott, 133 A.D.3d 794 (2015) (**Board Review 28**); Payton v. New York, 445 U.S. 573 (1979) (**Board Review 29**). People v. McBride, 14 N.Y. 3d 440 (2010), requires that an urgent need be present to justify a warrantless entry. The factors used to

determine this include: 1) the gravity or violent nature of the offense with which the suspect is to be charged, 2) whether the suspect is reasonably believed to be armed, 3) a clear showing of probable cause . . . to believe that the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) the peaceful circumstances of the entry (**Board Review 68**). The emergency exception to the warrant requirement permits officers to enter a protected space when they have reasonable grounds to believe an emergency is at hand and there is an immediate need for their assistance to protect life or property. The entry must not be primarily motivated by the intent to arrest and seize evidence, and there must be a reasonable basis to associate the emergency with the area or place to be searched. People v. Ormanian, 55 Misc. 3d 566 (2016) (**Board Review 69**).

Despite PO Nicoletti's stated reason for entering the apartment, the BWC footage captures him frisking civilians upon his entry, which discredits that he went inside for the safety of the homeowners and children. § 87(2)(g)

§ 87(2)(g) BWC footage of this incident following Lieutenant Guida's entry confirms that at the time PO Nicoletti entered, there were no additional circumstances that arose that amounted to exigency or an emergency. Additionally, the BWC footage confirms that PO Nicoletti did not request consent from the occupants of the § 87(2)(b) apartment prior to his entry.

§ 87(2)(g)

§ 87(2)(g)

Allegation (O) Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)

Allegation (P) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida questioned § 87(2)(b)

Allegation (Q) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida threatened to notify Administration for Children's Services.

Allegation (R) Offensive Language: On March 11, 2020, Lieutenant Daniel Guida made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation (S) Discourtesy: On March 11, 2020, Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)

In Lieutenant Guida's BWC footage (**Board Review 01**), beginning at the 07:47 minute mark of the media player timestamp (visible at the bottom of the screen), Lieutenant Guida tells § 87(2)(b) he cannot have parties in the § 87(2)(b) because it is unsafe. At 08:44, § 87(2)(b) says IAB called him regarding a prior incident involving Lieutenant Guida and he did not pursue that complaint. At 08:53, Lieutenant Guida says, "Do you think I have the slightest concern when someone calls Internal Affairs on me? If I paid civil judgements every time I've been sued, or I was concerned every time I had to go explain myself when someone complained when they didn't like how I was doing my job, I wouldn't have been doing it for 15 years." At 09:22, § 87(2)(b) repeats that he chose not to pursue a complaint. Lieutenant Guida says there would have been nothing to pursue. At 09:30, Lieutenant Guida says, "You're acting like you did me a favor. I don't care. I do not care is what I'm explaining to you."

At 09:38, § 87(2)(b) says to § 87(2)(b) "That's why all the white ones [something unintelligible] black ones." § 87(2)(b) tells § 87(2)(b) that Lieutenant Guida is a sergeant, and to let him do his job. At 09:52, Lieutenant Guida says, "If I wanted to be a dick, do you know what I would do? I would take those kids and lock up every single person. That's what a

dick would do. Am I doing that? No. So don't give me that 'this is what the white man does to the black man' fucking bullshit because I don't care. So just stay there, keep your silly opinions to yourself, because I don't care. If you don't have guns in this § 87(2)(b) I don't care."

Neither § 87(2)(b) nor § 87(2)(b) mentioned the discourteous and offensive statement made by Lieutenant Guida and captured in the BWC footage. § 87(2)(b) testified that he told Lieutenant Guida that he spoke with IAB about an incident Lieutenant Guida had been present for, and Lieutenant Guida replied, "I don't give a fuck about that. Do you know how many people are suing me? You think I give a fuck about Internal Affairs?" Lieutenant Guida then questioned him about a gun, to which § 87(2)(b) replied that the only gun he knew about was a screw gun. Lieutenant Guida said § 87(2)(b)'s children could be taken away by ACS because some people at the party had been smoking marijuana. § 87(2)(b) told him the party and marijuana had been confined to the room outside of his apartment and that his children had remained inside the apartment.

Lieutenant Guida testified that he did not independently recall threatening to notify ACS, questioning anyone regarding a gun, threatening to arrest anyone, or using profanity during this incident. After reviewing his BWC footage, Lieutenant Guida acknowledged using profanity and said he did so because one of the civilians made a veiled accusation that the officers were there for racist motivations. Lieutenant Guida wanted to impress on that individual that, "[he was] not being a dick," for the officers were not taking any police action or being "mean"; rather, they were being as professional and courteous as possible given the situation and were not there for racist motivations.

NYPD Patrol Guide, Procedure 200-02, states that officers must "render [their] services with courtesy and civility," and that they must, "maintain a higher standard of integrity than is generally expected of others" (**Board Review 37**). Disciplinary Court No. 2018-18951, states that officers have a responsibility to act with decorum in their interactions with civilians, though there are certain situations where profane remarks made during a stressful or chaotic situation do not constitute misconduct (**Board Review 38**). NYPD Patrol Guide, Procedure 203-10 states that officers are prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, identity/expression, sexual orientation, or disability, (**Board Review 41**). NYPD Patrol Guide, Procedure 215-03, states that the purpose of emergency removals or investigation and reporting of abused, neglected, or maltreated children is to protect children from abuse, neglect or maltreatment by instituting emergency removal proceedings if a child is in immediate danger, or conduct an investigation of a potential abuse situation where a child is in imminent danger, and report the findings to the appropriate authorities." (**Board Review 31**).

§ 87(2)(g)

Additionally, though § 87(2)(b) alleged that Lieutenant Guida questioned him regarding guns, the BWC footage confirms that he did not, but instead said there would be no problem so long as there were no guns present. § 87(2)(g)

As mentioned above, Lieutenant Guida said he threatened to notify ACS earlier in this incident due to the multiple civilians smoking marijuana and consuming alcohol in the presence of children. However, at this point, when he again threatened to remove § 87(2)(b)'s children into the custody of ACS, those circumstances no longer persisted, for the officers had already dispersed the partygoers. Additionally, none of the other officers' testimony suggested that the children were ever in a situation of abuse neglect, or maltreatment. § 87(2)(g)

§ 87(2)(g)

Despite Lieutenant Guida's contention that the officers were being as "courteous and professional as possible," telling § 87(2)(b) and § 87(2)(b) that if he wanted to be a "dick," he would take the children and arrest everyone, and that he did not want to hear any "this is what the white man does to the black man fucking bullshit" was neither courteous nor professional. § 87(2)(g)

Allegation (T) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida failed to provide Individuals with a business card.

Allegation (U) Abuse of Authority: On March 11, 2020, Lieutenant Daniel Guida failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) and § 87(2)(b) all testified that none of the civilian present, including themselves, were arrested or summonsed, and that no one received nor was offered a business card from any of the officers.

PO Diaz, Lieutenant Guida, PO Nicoletti, and Det. Gonzalez all did not remember if they provided business cards to any civilians, while PO Schreckenstein said he did not do so because he had minimal interaction with the civilians.

NYPD Administrative Guide, Procedure 304-11, requires officers to offer a business card upon the conclusion of law enforcement activities, including stops, frisks, and searches of persons, except in cases when a summons is issued or an arrest is made. (**Board Review 42**).

As discussed above, the investigation determined that Lieutenant Guida ordered his officers to "toss" individuals before they left the § 87(2)(b) and that these individuals were then frisked (therefore, these allegations have been pled to him). The BWC footage does not capture any officers offering their business cards to any civilians before they left. § 87(2)(g)

Allegation (V) Abuse of Authority: On June 25, 2020, officers entered § 87(2)(b) in Brooklyn.

Allegation (W) Abuse of Authority: On June 25, 2020, officers searched § 87(2)(b) in Brooklyn.

Allegation (X) Abuse of Authority: On June 25, 2020, an officer questioned § 87(2)(b)

Allegation (Y) Abuse of Authority: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.

Allegation (Z) Abuse of Authority: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.

Allegation (AA) Abuse of Authority: On June 25, 2020, officers failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that on June 25, 2020, at approximately 1:00 p.m., he stood on the sidewalk outside of his residence with § 87(2)(b) and his three friends, § 87(2)(b) and § 87(2)(b) whose contact information he did not know, when a black Ford Taurus pulled up in front of where the men were standing and four officers, one of whom was present on the March 11, 2020 incident date, exited the vehicle (**Board Review 14**). Without saying anything, three of the officers walked past the civilians and through the open § 87(2)(b) door. § 87(2)(b) and § 87(2)(b)

§ 87(2)(b)'s two young children were inside. An officer remained outside on the sidewalk and asked § 87(2)(b) if he had "anything in there," and if people were "hiding in [his] house." § 87(2)(b) said no. After approximately 10 to 15 minutes, the three officers exited the home and left without giving any civilians their business cards. § 87(2)(b) later told § 87(2)(b) that the officers entered their bedroom, the bathroom, and the closets. A barrel with clothes and groceries inside had been unlatched, couch cushions had been misplaced, and a sheet had been removed from a bed.

As noted above, § 87(2)(b) was unavailable to the investigation. § 87(2)(b)'s testimony was generally consistent with § 87(2)(b)'s, except he said none of the officers asked any questions or said anything to any civilian (**Board Review 15**).

The 71st Precinct Resource Recap Log for tour two June 25, 2020 (**Board Review 45**), revealed that at 1:07 p.m., Police Officer Morgan Taylor and Police Officer Reginald Smith, both of the 71st Precinct, responded to a 911 call of a past harassment and threat at § 87(2)(b).

PO Taylor testified that she and PO Smith responded to the location regarding a dispute between two neighbors, an elderly woman, who reported her neighbors threatened to call the police on her, and a couple in their 40s (**Board Review 47**). They spoke to both parties in the hallway of the apartment building. The officers advised the couple to seek out a mental health warrant for the elderly woman and left. PO Taylor denied entering the § 87(2)(b) or speaking to any other tenants of the building, and she denied witnessing any officer do so. PO Smith has been on extended medical leave without pay and was not cleared to be interviewed by the CCRB (**Board Review 48**); therefore, he was not interviewed.

Lieutenant Guida (**Board Review 49**), Det. Gonzalez (**Board Review 22**), PO Nicoletti (**Board Review 21**), PO Diaz (**Board Review 50**), and PO Schreckenstein (**Board Review 23**) all denied being present at the incident location on this date. The NYPD's Department Advocate's Office confirmed that Sgt. Kenny retired from the NYPD on October 27, 2021 (**Board Review 24**); therefore, he was not interviewed.

A request for all warrant audits conducted for § 87(2)(b), § 87(2)(b) and § 87(2)(b) on June 25, 2020 returned with negative results (**Board Review 56-58**). None of the officers present during the interaction on March 11, 2020 had any relevant memo book entries on June 25, 2020 (**Board Review 51-55**). Additionally, BWC footage requests for this incident date were all returned with negative results (**Board Review 10-13**). Aside from the event PO Taylor and PO Smith responded to, there were no other events related to § 87(2)(b) (**Board Review 46**). Requests for a consent to search report and any active search warrants were returned negative (**Board Review 59, 60**).

Though § 87(2)(b) alleged that one of the officers from the March 11, 2020 incident was present during this incident, NYPD documents do not place any of them there. Additionally, PO Taylor said she was present in the apartment building for an unrelated matter. § 87(2)(g)

§ 87(2)(g). Allegation V, W, Y, Z and AA have thus been plead to "Officers," and Allegation X has been plead to, "An officer," § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint in which § 87(2)(b) and § 87(2)(b) have been party (**Board Review 61-63**).
- Lieutenant Guida has been a member-of-service for 15 years and has been a subject in 21 CCRB complaints and 86 allegations, of which three were substantiated.
 - Case #201707882 involved substantiated allegations of a frisk, a search of person, and a vehicle search. The Board recommended charges and the NYPD imposed a forfeiture of five vacation days.
 - § 87(2)(g)
- Det. Gonzalez has been a member-of-service for 15 years and has been a subject in 23 CCRB complaints and 51 allegations, of which one was substantiated.
 - Case #201212490 involved a substantiated allegation of a stop. The Board recommended an unspecified command discipline and the NYPD imposed no discipline.
 - § 87(2)(g)
- PO Nicoletti has been a member-of-service for six years and has been a subject in six CCRB complaints and 16 allegations, of which three were substantiated.
 - Case #201900799 involved a substantiated allegation of a failure to provide RTKA business card. The Board recommended command level instructions and the NYPD imposed instruction.
 - Case #201905345 involved a substantiated allegation of physical force. The Board recommended formalized training and the NYPD imposed formalized training.
 - Case #202003973 involved a substantiated allegation of force with a nightstick as club. The Board recommended charges and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Diaz has been a member-of-service for nine years and has been a subject in seven CCRB complaints and 19 allegations, of which two were substantiated.
 - Case #201803402 involved a substantiated allegation of a vehicle search. The Board recommended command level instructions and the NYPD imposed instructions.
 - § 87(2)(g)
 - § 87(2)(g)
- PO Schreckenstein has been a member-of-service for eight years and has been a subject in three CCRB complaints and 12 allegations, none of which were substantiated.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- As of March 17, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed by § 87(2)(b) nor § 87(2)(b) in regard to this incident (**Board Review 64**)
- § 87(2)(b)

Squad: 13

Investigator: Inv. Ariana Thomas 03/25/2022

Signature

Print Title & Name

Date

Squad Leader: _____
Signature

IM Laura Kastner
Print Title & Name

03/25/2022
Date